IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 7TH NOVEMBER 2006 / 16TH KARTHIKA 1928

TRC.No. 119 of 2003

TA.12/2002 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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PETITIONER/APPELLANT/ASSESSEE:

AYSHA HOSIERY FACTORY (P) LTD.,
P.O. PALAPARAMBA, NIRMALAGIRI,
KANNUR DISTRICT.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SMT.P.VIJAYAMMA
SRI.DEVIDAS.U.K
SRI.SANDEEP.E.

RESPONDENT/ RESPONDENT/REVENUE:

STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, TRIVANDRUM.

BY GOVT. PLEADER (SHRI GEORGEKUTTY MATHEW)

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 07/11/2006 ALONG WITH TRC NOS.177/03, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

T.R.C. NOS. 119/03 & 177/03

Dated this the 7th day of November, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised in the two connected T.R.Cs. filed by assessee for the years 1996 - 1997 and 1997 - 1998 is whether petitioner/assessee is liable to purchase tax under Section 5A of the KGST Act on the purchase turnover of fire-wood used as fuel in the boiler. Even though the issue is covered in favour of petitioner vide decision of this Court in Dy. Commissioner v. Thomas Stephen & Co. Ltd. (1988 (1) KLT 568) which was confirmed by the Supreme Court, the decision is got over by an amendment to Section 5A introduced with effect from 29.8.1989. After the amendment, purchase of goods from unregistered dealers for use by a dealer also attracts tax under the KGST Act. Counsel for petitioner submitted that consumption of fire-wood as fuel, cannot be said to be "use"

attracting tax. We are unable to accept this contention because, the word "use" is introduced in the Section without any condition whatsoever attached to it. In other words, "use" can be temporary or continuous or even one time use and "use" may even destroy the goods like fuel which gets burned up. In other words, if the item purchased is put to any kind of use by dealer, the transaction attracts liability under Section 5A(1)(b) of the KGST Act, irrespective of nature and duration of use. This Court has held in the decision in State of Kerala v. Cochin Shipyard Ltd. (2006 (3) KLT 380) that even purchase of water and use of the same for cleaning attracts liability under Section 5A of the Act. In view of this decision and in view of our reasoning above stated, we dismiss the T.R.Cs. as devoid of any merit.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

T.R.C.NOS.119 & 177/03

JUDGMENT

7th November, 2006